



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 22nd August 2023**

+ **C.R.P. 231/2023, CM APPL. 43059/2023 & 43060/2023**

SH. PARVEEN KUMAR Petitioner

Through: **Mr. Chirag Mittal, Advocate.**

versus

SH. SOM DUTT SHARMA Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been preferred under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), praying for the following reliefs:

"a) set aside the impugned order dated 17.05.2023 passed by the Court of Sh. Divyang Thakur, Ld. Additional District Judge, South West, Dwarka, Delhi wherein the application under Order VII Rule 11 CPC filed by the Petitioner/Defendant in the Civil Suit bearing CS DJ No. 816/2019 title as "Som Dutt Sharma Versus Parveen Kumar" was dismissed.

b) pass any such other or further order which this Hon'ble Court may think fit and proper in the interest of justice."

2. The relevant factual matrix briefly recapitulated for the disposal of the present petition is reproduced herein:

a) The respondent/plaintiff along with his wife and brother had



allegedly taken Rs.3,00,000/- from the petitioner/defendant on the pretext of providing a government job .

- b) Thereafter, the petitioner registered an FIR bearing No. 118/2010 at P.S Palam Village, under Sections 420, 120-B and 34 of the Indian Penal Code, 1860 against the respondent, his wife and his brother, where under the investigating officer was unable to find substantial evidence against the respondent, her husband and her brother-in-law.
- c) Subsequently, the respondent filed a civil suit bearing No. 816/2019, before the learned ADJ, Dwarka Court, New Delhi, for malicious prosecution against the petitioner seeking Rs. 5,00,000/- as compensation.
- d) Thereafter, the petitioner filed his written statement in the abovementioned suit, along with an application under Order VII Rule 11 of the CPC, for rejection of plaint.
- e) In his application under Order VII Rule 11 of the CPC, the petitioner claimed that the respondent along with his wife and brother are habitual offenders. The petitioner further claimed that no sufficient cause of action accrues in favour of the respondent as the complaint filed under Section 156 (3) of the Code of Criminal Procedure, 1973, is not a private complaint case and hence, the petitioner has no role to play.
- f) Consequently, the learned Trial Court, dismissed the application under Order VII Rule 11 of the CPC, *vide* the impugned order dated 17th May, 2023 in Civil Suit bearing No. 816/2019. Hence, the present petition.



3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has approached this Court challenging the impugned order under the revisional jurisdiction of this Court, since the impugned order dated 17th May, 2023 passed by the learned Trial Court is erroneous, illegal and unjustified.

4. It is submitted that the respondent along with his wife and brother have cheated many people in a manner similar to that of the petitioner and have several complaints registered against them. Learned counsel also submitted that the suit filed by the respondent against the petitioner is merely to tarnish the petitioner's image in society.

5. Heard the learned counsel appearing on behalf of the petitioner and perused the record.

6. As per the material on record, the learned Trial Court vide the impugned order dated 17th May, 2023 held that the grounds taken by the petitioner in his application filed under Order VII Rule 11 of the CPC, requires the Court to peruse the averments made in the plaint and the documents annexed thereto, in order to assess the case of the petitioner.

7. The learned Trial Court while passing the impugned order further observed that the grounds taken by the petitioner are triable issues and the Court will have to adjudicate the same on merits and not in an application made under Order VII Rule 11 of the CPC. Relevant paragraphs of the impugned order dated 17th May, 2023 are reproduced below:

“Ld. Counsel for Defendant has relied heavily upon the order of acquittal in the favour of the Defendant to submit that the present suit is not maintainable. Submissions made in the application under Order VII R 11 of CPC requires this Court to



go into the depth of the allegations in the plaint as well as in the WS which is not permissible under Order VII R 11 of CPC. Whether or not the suit for malicious prosecution is maintainable on the merits and whether or not the evidence is required to be led, has to be seen but the same cannot be decided in the application under Order VII R 11 of CPC which essentially requires this Court to peruse the documents of the Plaintiff and assess the merits of the Plaintiff's case.

It has been submitted that the order of the Ld. M.M. acquitting the Plaintiff would show that the acquittal was based on the ground that the prosecution could not prove the case beyond reasonable doubt and therefore, the suit for malicious prosecution is not maintainable.

Again, this is a submission which has to be decided on the merits and not under the application under Order VII R 11 of CPC.

Therefore, application under Order VII R 11 of CPC is hereby dismissed.”

8. It is a settled principle of law that the provision under Order VII Rule 11 of the CPC, provides for rejection of a plaint, and the scope of judicial inquiry in an application under the said rule is limited to examining the averments made in the plaint. The Court has the authority to dismiss the plaint for lack of cause of action, if the relief sought is undervalued or the valuation is not corrected within the time period set by the Court; or if insufficient court fees is paid or the additional court fees are not provided within the time period set by the Court; or if the plaint alleges that the suit is barred by the provisions of any statute. It is under these circumstances that the Court may consider rejection of a plaint.

9. In the instant case, the petitioner is seeking revision of the impugned order whereby the petitioner's application under Order VII Rule 11 of the CPC, was dismissed by the learned Trial Court. It has been stated in the impugned order that the plaint filed by the respondent cannot be rejected on



the grounds that constitute triable issues and hence, the same cannot be intervened with by the learned Court below, at the stage of deciding the application under Order VII Rule 11 of the CPC. Such instances have been analysed by the Hon'ble Supreme Court in a catena of judgments.

10. The Hon'ble Supreme Court in the case of ***Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661***, dealt with the aspect of analysing evidence in order to invoke Order VII Rule 11 of the CPC, and held as follows:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

11. In the aforesaid mentioned judgment, the Hon'ble Supreme Court observed that in the event an application under Order VII Rule 11 of the CPC, is made, the Court will have limited power with regards to evidence submitted by the parties therein. Any issue that may arise on merits is beyond the jurisdiction of the Court in such an application.



12. The Hon'ble Supreme Court further in the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, (2020) 7 SCC 366, observed that the remedy under Order VII Rule 11 of the CPC, empowers the Court to dismiss a suit at the threshold, without considering any evidence adduced by the parties. The relevant paragraph is extracted as follows:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.”

13. The aforesaid issue has also been dealt with by multiple cases before this Court such as, in the case of ***Avtar Singh Narula v. Dharambir Sahni***, 2008 SCC OnLine Del 680, wherein, a Division Bench of this Court held the following:

“14.... In view of the above said circumstances, we are of the view that there is a valid reason for filing the suit and there are triable issues involved wherein evidence of the party is required. Hence the contention of the appellants cannot be accepted. Thus, the application of the appellants under Order VII Rule 11 CPC was not maintainable and order passed by the learned Single Judge is sustained.....”

14. This Court, in the case of ***Avtar Singh Narula (Supra)*** further expounded upon the settled legal principle governing Order VII Rule 11 of the CPC. The Bench held that the issues that are brought before the Court cannot be decided in an application filed under Order VII Rule 11 of the CPC, wherein, the evidence of the parties is required to be analysed or it constitute issues that are triable in nature. It has also been established that where there is a valid reason for filing the suit and the issues involved are those that require



evidence of the parties, there is no ground made out for the High Court to interfere with the findings of the subordinate Courts.

15. Since it is observed that there is no infirmity in the impugned order which is under the challenge before this Court, therefore at this stage; it becomes pertinent to examine the scope of the revisional jurisdiction of this Court under Section 115 of the CPC. The Hon'ble Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*, (2017) 14 SCC 132, propounded that the High Court cannot interfere with the factual findings of a Trial Court in exercise of its revisional jurisdiction. Such jurisdiction remains restricted to cases wherein there is an irregular exercise of jurisdiction by the subordinate Courts.

16. Similarly in the case of *ITI Ltd. v. Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510, the Hon'ble Supreme Court *vis-à-vis* the scope of Section 115 of the CPC, held that the supervisory or revisional jurisdiction exercised by the High Court is limited to the purpose of correcting jurisdictional error, if any, committed by a subordinate Court.

17. In the instant case, the learned Trial Court deemed it fit to not reject the plaint on the grounds taken by the petitioner and held that the submissions made by the petitioner would require the Court to go into the intricacies of the suit and the same is not permissible in an application made under Order VII Rule 11 of the CPC. The learned Trial Court has rightly adjudicated upon the application of the petitioner filed under Order VII Rule 11 of the CPC, as the grounds taken by the petitioner cannot be determined at the stage of deciding an application under the said provision and can only be ascertained when the parties lead the evidence during the trial. Any issue brought forth by the parties, which require the Court to go into the complexities of the evidence,



cannot be decided in an application under Order VII Rule 11 of the CPC, even when there are well founded reasons for filing of the suit.

18. The learned Trial Court, while rejecting the application filed under Order VII Rule 11 of the CPC, held that in order to determine if the suit for malicious prosecution is maintainable on merits and whether evidence is required to be led by parties cannot be decided in an application under Order VII Rule 11 of the CPC.

19. In view of the principle laid down in the aforesaid judgments and its application on the current facts and scenarios, this Court is of the view that the decision of the learned Trial Court cannot be termed illegal or materially irregular merely on the grounds that the Court erroneously decided the question of law involved therein. Rather, Section 115 of the CPC, embarks a peculiar kind of restraint that needs to be followed in its true spirit. This Court is empowered to exercise its revisional powers where material irregularity or jurisdictional illegality is established and no interference is required merely on the grounds of wrong adjudication of an application.

20. In light of the above discussions, it is evident that no case of revision under Section 115 of the CPC, has been made out and the petitioner has failed to show that there exists sufficient cause which can establish the failure on part of the learned Trial Court in exercising its jurisdiction while deciding the application under Order VII Rule 11 of the CPC. Therefore, the learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity.

21. This court is of the view that no interference is warranted with the impugned order dated 17th May, 2023 passed by the learned ADJ, South West Dwarka Court, New Delhi, in Civil Suit bearing No. 816/2019, thereby,



rejecting the application of the petitioner under Order VII Rule 11 of the CPC.

22. Accordingly, this revision petition is dismissed. Pending applications, if any, also stand dismissed.

23. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 22, 2023

pa/ryp

Click here to check corrigendum, if any